

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CINDY ARMSTRONG

PLAINTIFF

V.

NO.: 1:16cv67-GHD-DAS

THE KROGER COMPANY

DEFENDANT

NOTICE OF REMOVAL

COMES NOW, Defendant, The Kroger Company, by and through counsel, Bill Luckett of Luckett Tyner Law Firm, P.A., and files and serves its Notice of Removal of that certain civil action pending in the Circuit Court of Alcorn County, Mississippi, styled Cindy Armstrong v. The Kroger Company Civil Action No. CV16-184 PA14-CO-09-0207 on the general docket of said court to the United States District Court for the Northern District of Mississippi, Eastern Division.

The above entitled suit was filed on April 4, 2016. Process was effected by service upon The Kroger Company on April 12, 2016, by serving Corporation Service Company, its registered agent, located in Jackson, Mississippi. Said suit is of the civil nature of which the District Courts of the United States have original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) as the suit is between citizens of different states and the matter in controversy, clearly exceeds \$75,000.00, exclusive of interest and costs.

According to the Complaint, the Plaintiff is a resident citizen of Alcorn County, Mississippi. Kroger is an Ohio corporation with its principal place of business in Cincinnati, Ohio. Thus, it is a resident citizen of Ohio. The real controversy in said suit is, and at the time of commencement thereof was, and all times since, has been a controversy between citizens of different states.

Therefore diversity of citizenship exists between the Plaintiff and the Defendant.

The Plaintiff has failed to allege a specific amount in controversy. A Court can determine that removal is proper if it is facially apparent that the claims are likely above \$75,000.00 Allen v. R&H Oil & Gas Co., 63 F.3d 1326, 1335 (5th Cir. 1995). If the Court cannot make a facially apparent determination that the claims are likely above \$75,000.00, then the removing attorney “may support federal jurisdiction by setting forth the facts in controversy-[either] in the removal petition [or] by affidavit-that support a finding of the requisite amount.” Garcia v. Koch Oil Co. of Texas, Inc. 351 F.3d 636, 639 (5th Cir. 2003) citing Allen, F.3d at 1335.

The Plaintiff alleges in paragraph 6 of her complaint that “As a direct result of Kroger’s negligence Cindy Armstrong has suffered the following harms and losses: a. Past, present and future medical expenses; b. pain and suffering; c. loss or enjoyment of life; and c. emotional distress.” In addition to the allegations made in the Plaintiff’s Complaint, the Plaintiff’s attorney made a pre-suit settlement demand to the Defendant on October 24, 2014. Attached hereto as Exhibit A is a copy of the Plaintiff’s demand letter. Counsel for Plaintiff specifically states in the letter that the Plaintiff demanded \$100,000.00. Based upon the foregoing, the Plaintiff will likely seek more than \$75,000.00 in damages. Accordingly, the amount in controversy exceeds the jurisdictional amount and removal is proper.

A request has been transmitted to the Circuit Clerk of Alcorn County, Mississippi, requesting that all summonses, pleadings, discovery and other file materials presently on hand with said clerk relative to the state court case be forwarded to the undersigned. Upon receipt of the state court record, counsel for Kroger will file the state court record electronically.

RESPECTFULLY SUBMITTED,

THE KROGER COMPANY.

/S/ BILL LUCKETT
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CERTIFICATE OF SERVICE

I, Bill Lockett, do hereby certify that I have this day served a copy of the foregoing document on the following person pursuant to Rule 5 of the FEDERAL RULES OF CIVIL PROCEDURE:

Ned McDonald, III, Esquire
McDonald Law Firm, PLLC
143-C Willowbrook Drive
Saltillo, MS 38866

THIS, the 20TH day of April, 2016.

/S/ BILL LUCKETT
BILL LUCKETT